

is impacted by the wave motion beneath the sea surface to pivot the lever arm by its distal (upper) end about its proximal (lower) end mounted stably to the sea bottom, and that substantially the entire panel surface area is located in the L/2 depth region below the sea surface.

As noted previously, the Applicant traverses the Examiner's ground of rejection to the extent it is based on the Axelford patent. Despite the Examiner's repeated statement to the contrary, there is nothing in Axelford that states or suggests that the panel has substantially its entire surface area located within the L/2 region beneath the sea surface. Axelford shows a pendulum-type paddle or vane which is mounted on a pivotal frame extending at some depth beneath the sea surface. The paddle pivots by its lower end about its mid-level mount, which is exactly opposite to the invention defined in Claim 1 that pivots by its distal (upper) end about its proximal (lower) end mounted stably to the sea bottom. The surface area of the Axelford paddle appears to occupy only a small part of the L/2 region.

The Smith patent shows a system markedly different from Axelford, in which an upright sail moves to and fro on a horizontal track over a horizontal distance L/2 along with the ebb and flow of wave motion. Smith takes advantage of the difference in height between the crest of an oncoming wave above the water level at the backside of the sail to push the sail on a horizontal slide to and fro. The base of the sail is pivotably mounted to a carriage movable on the track, but any pivoting is primarily only to accommodate the pressure difference due to the height difference on the front and back sides of the sail above the sea surface, not the circular motion of water particles in the L/2 region below the sea surface. The Smith panel does not have substantially its entire surface area located within the L/2 region beneath the sea surface, but rather protrudes above the sea surface to take advantage of the difference between wave crest and trough heights.

The Smith teaching (upright sail extending above the sea surface mounted on pivot slide below the sea surface) cannot be combined with the Axelford teaching (pendulum paddle extending toward the sea bottom on a frame mounting below the sea surface) since they are fundamentally different structures operating in different ways, and neither discloses or suggests locating substantially the entire panel surface area in the L/2 depth region below the sea surface.

In summary, Claim 1 as amended is now deemed to be patentably distinct over the cited prior art, as well as Claims 2-20 depending therefrom. This Response introduces a claim amendment and arguments which only clarify the points in favor of patentability as raised previously, and also addresses those same issues with respect to the newly cited Smith patent. Thus, no new issues are deemed to be raised by this Response, as it relies on the same points argued previously for patentability. It is requested therefore that the amendment to main Claim 1 be entered after the Final Action, and that a Notice of Allowance be issued upon reconsideration.

CERTIFICATE OF FACSIMILE TRANSMISSION

The undersigned certifies that the foregoing is being mailed on September 6, 2005, by sending it by facsimile transmission to the Central FAX Number 571-273-8300 for the USPTO.

Respectfully submitted,
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